

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

**FILED**

AUG 05 2011

DONALD R. HUENE  
IN PROPRIA PERSONA  
7429 N. VALENTINE  
FRESNO, CA 93711  
(559) 431-1639

Plaintiff,

v.

U.S. DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
1111 CONSTITUTION AVENUE  
WASHINGTON, DC 20224

and

ANTHONY SHELLY  
INTERNAL REVENUE SERVICE  
2525 CAPITOL STREET, SUITE 204  
FRESNO, CA 93721-2227

Does I through X

Defendants.

CASE NO:

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY                       
DEPUTY CLERK

COMPLAINT FOR INJUNCTIVE,  
DECLARATORY AND MONETARY RELIEF

1:11 CV 01306 AWI SKO, *Red*

Dated this \_\_\_\_\_

COMPLAINT FOR INJUNCTIVE DECLARATORY AND MONETARY RELIEF

1. This is an action under the Privacy Act of 1974, 5 U.S.C. § 552(a) et seq., the Freedom of Information Act, U.S.C. § 552(1) et seq., for injunctive, declaratory and monetary relief pursuant to the aforementioned. Federal Declaratory Judgement Act 28 U.S.C. § 2201 and 42 U.S.C. § 1983.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552a(g) (1) section 552(a) (B), and U.S.C. § 1311.

**RECEIVED**

AUG 05 2011

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
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VENUE

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AUG 05 2011

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY                       
DEPUTY CLERK

1 3. Venue is appropriate in the Eastern District of California United  
2 States District Court pursuant under U.S.C. § 552(a)(g)(5), § 552(a)(4)(B) and 28  
3 U.S.C. § 1391.

4 PARTY

5 4. Plaintiff Donald R. Huene is a private individual appearing in  
6 propria persona and is proceeding to request injunctive, declaratory and  
7 monetary relief pursuant to the aforementioned. Plaintiff, Donald R. Huene  
8 is a citizen of the United States and a long-time resident of the area of  
9 jurisdiction of the United States District Court for the Eastern District of  
10 California.

11 5. Defendant in the United States Department of Treasury is an  
12 agency established by the executive branch in the United States Government.  
13 Internal Revenue Service is an agency within the meaning of 5 U.S.C. §  
14 552(f)(1)(209). The Internal Revenue Service is also an agency within the meaning of  
15 5 U.S.C. § 552(f)(1)(2009).

16 6. Anthony Shelly is an agent for the aforementioned agency, Internal  
17 Revenue Service.

18 FACTS

19 7. Defendant Internal Revenue Service has previously ordered the  
20 Plaintiff for examinations of scheduled F filings on numerous occasions.  
21 Defendants decided to renew their examination of Plaintiff and requested a  
22 meeting. On December 14, 2010, Plaintiff granted permission for Richard  
23 Holland and Necia Wollerman to represent Plaintiff and they were given power  
24 of attorney to contact and complete the audit.

25 8. Agents, including Defendant Anthony Shelly and the agent whom he  
26 supervised, Siu Chan, requested voluminous records, almost all of which were  
27 in their possession. As a result, Plaintiff decided that the audit would  
28 have to be managed in propria persona.

1 As a consequence, Plaintiff wrote a letter dated April 7, 2011 addressed to  
2 Ms. Chan confirming previous contacts. Plaintiff notified them that he was  
3 appearing for the audit and that all present and subsequent litigation in  
4 propria persona. Consequently, Ms. Siu Chan and Defendant Anthony Shelly  
5 were hereby instructed to contact only Plaintiff, the party in propria  
6 persona. This letter was to clarify previous correspondence which may not  
7 have been specifically clear and apparently was not understood by Ms. Chan.

8 9. This letter of April 7, 2011 documented the previous assumption  
9 that Plaintiff had that Richard L. Holland was no longer to represent him in  
10 the appearance before the Internal Revenue Service and I was to be the only  
11 contact. In the fact that this letter documented that I was rescinding the  
12 previous power of attorney granted to Richard L. Holland.

13 10. On or about June 6, 2011, I received an e-mail from Richard L.  
14 Holland, CPA indicating Mr. Shelly took it upon himself not to contact me  
15 but to just contact Mr. Holland without either copying me or notifying me of  
16 his contact with Mr Holland.

17 11. In a letter dated June 7, 2011, I confirmed the fact that I  
18 rescinded completely Mr. Holland's power of attorney, as I was acting as  
19 myself in propria persona. I notified him that I found out he had phoned Mr.  
20 Holland despite my telling him not to. I notified Mr. Shelly in a letter  
21 dated June 7, 2011, that I was getting billed from Mr. Holland which should  
22 be Mr. Shelly's responsibility because I gave no authorization for him to  
23 contact Mr. Holland as the power of attorney had been rescinded. I further  
24 informed Mr. Shelly that this was a breach and unlawful disclose of tax  
25 information which was in violation of the law (IRC § 6103(a)).

26 12. It is noted that the Internal Revenue Service phoned Mr. Holland  
27 instead of me despite being clearly documented that I was the only one to be  
28 contacted directly.

1        13.     Secondary to Mr. Shelly's unauthorized phone calls, I began  
2 receiving bills from Mr. Holland for these contacts. I informed Mr. Shelly  
3 that he had no authorization to contact Mr. Holland and I thought there was a  
4 breach and unlawful disclosure of information which was precluded and  
5 unlawful pursuant to IRC § 6103(a).

6        14.     Giving Mr. Shelly the benefit of the doubt that he had not been properly  
7 informed by Ms. Chan of my mandates, in a letter dated June 7, 2011, I requested him  
8 that if this was, in fact, a simple error and not willful, wanton, or malicious, that  
9 I would accept an apology from him within the next five (5) days if this action was  
10 inadvertent and not a willful, wanton, and malicious disclosure of tax information  
11 prohibited by IRC 6103(a) by disclosing information to an unauthorized person after a  
12 power of attorney has been rescinded. If Defendant Shelly had acted willfully,  
13 wantonly, and maliciously violating IRC 6103(a), he would not respond, and I would  
14 conclude and assume that the disclosure was willful, wanton, and malicious and not  
15 simply inadvertent.

16        15.     Mr. Shelly never responded to my request and consequently, he confirmed  
17 that his disclosure was a willful, wanton, and malicious, violation of IRC § 6103(a).  
18 By Defendant Anthony Shelly's silence, he acknowledged and affirmed that his contact  
19 with Mr. Holland was willful, wanton, and malicious.

20        16.     On or about July 6, 2011, Mr. Shelly, despite my admonition, requests,  
21 and mandates not to, again contacted Mr. Holland directly.

22        17.     In a letter dated July 11, 2011, I informed Defendant Shelly that  
23 he had a serious breach of the law which was both malicious and willful. I  
24 noted that by his silence, he had acknowledged and consented to his actions  
25 as willful, wanton, and malicious. It was noted in that letter that since  
26 Defendant Shelly had not responded to my request to explain his actions, I  
27 reasonably assumed that he did not wish to explain. As a consequence of his  
28 contact with Mr. Holland, I was getting bills from Mr. Holland for his  
illegal contacts which were not permitted by law. It was noted that these

1 contacts were costly, costing Plaintiff money and time and all these contacts  
2 were unnecessary, unlawful, and resulting in no resolution of the problem  
3 presented.

4 18. Mr. Shelly was further informed that he had no authorization to  
5 contact the CPA. Contacts by Mr. Shelly to the certified public accountant  
6 were costing the Plaintiff money and these contacts were unnecessary,  
7 unlawful, and resulting in no resolution.

8 19. Despite all the prior letters and correspondence telling Mr.  
9 Shelly that the power of attorney had been rescinded and he had no authority  
10 to deal with my accountant directly, he nonetheless continued to contact him  
11 which represented continued willful, wanton, and malicious violation of the  
12 Internal Revenue code. Defendant Anthony Shelly did this knowing that Mr.  
13 Holland's time was expensive, not to the Defendant Shelly, but rather to the  
14 Plaintiff himself. Mr. Shelly presented himself to Mr. Holland to be a  
15 government agent with authority when he called the accountant knowing that  
16 the accountant, Richard Holland, knowing that he had no such authority, any  
17 reasonable person would have known that this was a violation of the Fourth  
18 Amendment of the United States Constitution making the action willful, wanton,  
19 and malicious.

20 20. Plaintiff documents that Defendant Anthony Shelly violated Plaintiff's  
21 Civil Rights under 42 United States Code Section 1983. Defendants have violated the  
22 Fourth Amendment by orally searching and seizing information that they were not  
23 entitled to obtain in the manner of which it was obtained.

24 21. Defendants have done this under color of law, although they had  
25 no legal authority to do so as aforementioned.

26 22. Defendant Anthony Shelly was given time to explain his previous  
27 actions and he chose to ignore or waive that opportunity, leading to the  
28 conclusion that Mr. Shelly, in fact, do this willfully, maliciously, and

1 simply because he could.

2 23. The Plaintiff alleges that as a direct result of the unlawful  
3 actions by the defendant, the Plaintiff has sustained both monetary and time  
4 damages.

5 24. There has been no response at all from Defendant Shelly suggesting  
6 that these breaches were inadvertent and not wanton, willful and malicious.

7 FIRST CAUSE OF ACTION (PRIVACY ACT /FREEDOM OF INFORMATION ACT - DENIAL OF

8 ACCESS TO RECORDS)

9 25. Plaintiff repeats and realleges the allegations contained in the  
10 aforementioned paragraphs inclusively.

11 26. Plaintiffs have requested under the Privacy and Freedom of  
12 Information Act copy of all information maintained about Plaintiff. A  
13 voluntary extension was given by Plaintiff so Defendants could comply. A  
14 suit was filed when the Defendants failed to reply in the time granted by  
15 Plaintiff for Defendants to obtain the records.

16 SECOND CAUSE OF ACTION (PRIVACY ACT - IMPROPER DISSEMINATION)

17 27. Plaintiff repeats and realleges all the allegations contained in  
18 the aforementioned paragraphs. Defendant Internal Revenue Service and  
19 Defendant Shelly, in violation of § (d)(1) of the Privacy Act, Defendants failed  
20 to secure written authorization to request information as noted above. Disclosures  
21 were not permitted by routine exception and Defendants failed to clarify whether or  
22 not there was any exception to the provisions of the Privacy Act.

23 28. As a result, the Defendants violation of the Privacy Act,  
24 Plaintiff has suffered adverse and harmful effects including but not limited  
25 to mental distress, emotional distress, embarrassment, humiliation, and  
26 suffered monetary damages secondary to this improper disclosure.

27 THIRD CAUSE OF ACTION - VIOLATION OF CIVIL RIGHTS

28 29. Plaintiff alleges that Defendants have violated his civil rights



1 under 42 U.S. Code § 1983. Defendants have violated the fourth amendment by orally  
2 searching and seizing information they were not entitled to obtain in the manner that  
3 the Defendants obtained it. Defendants did this under color of law although they had  
4 no legal authority to do so.

5 30. In a letter dated June 7, 2011, Plaintiff asked said Defendant  
6 IRS Agent Shelly to explain why he had made the contact of June 6, 2001 after  
7 the letter of April 7, 2001 revoking such authority and said Defendant chose  
8 to ignore the inquiry. When Plaintiff asked to have Defendants explain their  
9 actions, they chose to ignore and waive that opportunity. Instead, said  
10 Defendant made a further unauthorized and unconstitutional contact with  
11 Plaintiff's accountant on July 6, 2011. Defendant did this knowing that he  
12 had been told specifically that he had no such authorization or consent,  
13 knowing he had no legal authority to make such contacts and knowing he  
14 possessed no warrant, all of said activity being willful, wanton and  
15 malicious. In sum, Defendant Shelly did this by claiming authority he knew  
16 he did not have. This would let any person conclude that Defendants did this  
17 willfully, wantonly, and maliciously, and simply because they could.

18 31. In spite of all directives, withdrawal and rescinding of all  
19 previous consent, said Defendant Shelly repeatedly contacted the accountant,  
20 Richard Holland, seeking and gaining and gaining information to be used  
21 against Plaintiff in the ongoing audit. All theses unauthorized and  
22 warrantless contacts were searches and seizures without consent and without  
23 warrant, and therefore and thereby in violation of the Plaintiff's 4<sup>th</sup>  
24 Amendment rights and therefore in violation of Plaintiff's Civil Rights  
25 pursuant to 42 USC 1983.

26 32. As a result of the aforementioned unlawful actions, it has cost  
27 Plaintiff both time and money and Plaintiff has suffered monetary loss.  
28 Secondary to the egregious, wanton, willful and malicious actions of  
Defendants, Plaintiff is hereby and therefore entitled to punitive damages.

1 WHEREFORE, Plaintiff Donald R. Huene requests that the Court award him  
2 the following relief:

3 1. Declare the Defendant Anthony Shelly and Defendant Internal  
4 Revenue Service violated the Privacy and Freedom of Information Acts as  
5 aforementioned;

6 2. Declare that Defendant Anthony Shelly and Defendant Internal  
7 Revenue Service violated the civil rights of the Plaintiff;

8 3. Order the Defendants to immediately release all requested records  
9 in their entirety to the Plaintiff.

10 4. Award Donald R. Huene any actual damage under 5 U.S.C. § 552(a)(g)  
11 (4)(A) the exact amount of which to be determined at trial but is not less than  
12 \$1000.00;

13 5. Award Plaintiff Donald R. Huene punitive damages from Defendant  
14 Anthony Shelly for violation of Plaintiff's Civil Rights.

15 6. Award costs and attorney fees as provided by 5 U.S.C. §  
16 552a(g)(3)(B) and § 552a(g)(4)(B), § 552(a)(4)(E), and U.S.C. § 2412 (d), and under  
17 42 U.S.C. § 193.

18 7. Refer Anthony Shelly, who is responsible for violating the  
19 Privacy Act for prosecution under 5 U.S.C. § 552a(i)(1);

20 8. Expedite this action in every way pursuant to 28 U.S.C. § 1657 (a) and  
21 grant such other and further relief as the court may deem just and proper.

22 Respectfully submitted,

23  
24 By: Donald R. Huene  
25 Donald R. Huene  
26 In propria persona  
27 7429 N. Valentine  
28 Fresno, CA 93711  
(559) 431-1639